

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Joselyn Gordon)	File No. EB-03-NY-054
Rescue Car Services, Inc.)	NAL/Acct. No. 200332380021
WPTH937)	FRN 0005-1517-66
Brooklyn, New York)	

FORFEITURE ORDER

Adopted: December 1, 2004**Released: December 3, 2004**

By the Assistant Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of four thousand dollars (\$4,000) to Joselyn Gordon as owner of Rescue Car Service, Inc. (“Rescue”), licensee of WPTH937, Brooklyn, New York, for willful and repeated violation of Section 90.403(a)(2) of the Commission’s Rules (“Rules”).¹ The noted violation involves Rescue’s failure to operate radio transmitting equipment in a permissible manner by operating on the unauthorized frequency of 151.605 MHz.

2. On June 10, 2003, the District Director of the Commission’s New York, New York Field Office (“New York Office”) issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) in the amount of \$4,000 to Mr. Gordon.² Mr. Gordon filed a response to the NAL dated on or about July 17, 2003.

II. BACKGROUND

3. On April 2, 2003, an agent from the New York Office, having received a complaint of interference to frequency 156.950 MHz, VHF Marine Channel 19, in the Maritime Service of the Safety and Special Radio Services, used a mobile direction-finding vehicle and traced the source of the interference on 156.950 MHz to transmissions coming from an antenna located at Rescue’s business, 264A Troy Avenue, Brooklyn, New York. The agent further determined that transmissions on the frequency 151.605 MHz, coming from the same Brooklyn address, generated the spurious emissions on 156.950 MHz. A search of the Commission’s data base found that there is no authorization to operate a station on 151.605 MHz in Brooklyn, New York.

4. On the next day, April 3, 2003, the agent again observed a radio signal on 151.605 MHz, and identified that Rescue operated a base transmitter on 151.605 MHz from that same Brooklyn address. According to Commission records, however, Rescue was licensed to operate radio station WPTH937 on base frequency 151.490 MHz instead. At that time, the agent conducted an inspection of the station, and advised Mr. Gordon, the owner of Rescue, that Rescue’s base station was operating on an unauthorized frequency of 151.605 MHz.

¹ 47 C.F.R. § 90.403(a)(2).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332380021 (Enf. Bur., New York Office, released June 10, 2003).

5. On April 9, 2003, three Commission agents monitored transmissions on 151.605 MHz and using a mobile direction-finding vehicle, again positively observed radio transmission on 151.605 MHz from Rescue's base station in Brooklyn. The next day, April 10, 2003, two of the Commission agents interviewed the service manager of Aries Communications, the communications company which services Rescue's equipment. The manager told the agents that his company loaned Rescue a base transmitter for operation on its licensed frequency, 151.490 MHz, to replace the transmitter operating on the unauthorized one.

6. On June 10, 2003, the New York Office issued an *NAL* in the amount of \$4,000 to Mr. Gordon for Rescue's apparent willful and repeated violation of Section 90.403 (a)(2) of the Rules. In his response, Mr. Gordon does not deny that Rescue was operating on an unauthorized frequency on April 2 or 3, 2003 but does challenge the Commission's finding that it was operating on an unauthorized frequency on April 9, 2003. Mr. Gordon states that he contacted his service company, Aires Communication, on April 3, 2003, and that Aires Communication changed Rescue's transmitter to operate on the correct frequency. Thus, Mr. Gordon claims, it "is not true that on April 9, 2003 I was still violating ... [Section] 90.403 (a)(2) of the [C]ommission's rules." Mr. Gordon offers no other defense or basis for mitigation.

III. DISCUSSION

7. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),³ Section 1.80 of the Rules,⁴ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("Policy Statement").⁵ In examining Mr. Gordon's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁶

8. Section 90.403(a)(2) of the Rules requires licensees of radio stations in the private land mobile radio services to "exercise such direction and control as is necessary to assure that all authorized facilities are employed only in a permissible manner." The Commission agents' investigation establishes that Rescue operated a transmitter located at 264A Troy Avenue, Brooklyn, New York, on an unauthorized frequency (151.605 MHz) on April 2 and 3 and again on April 9, 2003, after its owner was informed of the unauthorized operation. Based on the record before us, Mr. Gordon failed to exercise the direction and control necessary to assure that Rescue's facilities were employed only in a permissible manner. We find that Rescue willfully⁷ and repeatedly⁸ violated Section 90.403(a) (2) of the Rules, and Mr. Gordon as its owner is responsible for the violation.

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁶ 47 U.S.C. § 503(b)(2)(D).

⁷ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁸ According to the Commission's investigators, Rescue operated on an unauthorized frequency on April 2, 3 and 9, 2003. As provided by 47 U.S.C. § 312(f)(2), a violation which occurs more than once is "repeated." The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97th Cong. 2d Sess. 51 (1982). See *Southern California Broadcasting Co.*, *supra*.

9. Mr. Gordon's claim that his service company fixed the spurious emission before April 9, 2003, is not supported by the record, and even if it were so supported, no mitigation is warranted on the basis of Mr. Gordon's purported correction of the violation. Remedial measures do not warrant mitigation when they occur after Commission notification of the violation. As the Commission stated in *Seawest Yacht Brokers*, "corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations."⁹ We conclude that neither cancellation nor reduction of the proposed \$4,000 monetary forfeiture is therefore warranted.

IV. ORDERING CLAUSES

10. **ACCORDINGLY, IT IS ORDERED THAT**, pursuant to Section 503(b) of the Act,¹⁰ and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹¹ Joselyn Gordon, as owner of Rescue Car Service, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$4,000 for willful and repeated violation of Section 90.403(a)(2) of the Rules.

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹² Payment shall be made by mailing a check or similar instrument, payable to the order of the "Federal Communications Commission," to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FCC Registration Number (FRN), and the NAL/Acct. No. referenced in the caption. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹³

12. **IT IS FURTHER ORDERED THAT** a copy of this *Order* shall be sent by first class mail and certified mail, return receipt requested, to Joselyn Gordon, Rescue Car Service, Inc., 264A Troy Avenue, Brooklyn, New York 11213.

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon
Assistant Chief, Enforcement Bureau

⁹ 9 FCC Rcd 6099, 6099 (1994). See also *Callais Cablevision, Inc.*, 17 FCC Rcd 22626, 22629 (2002); *Radio Station KGVL, Inc.*, 42 FCC 2d 258, 259 (1973); *Executive Broadcasting Corp.*, 3 FCC 2d 699, 700 (1966); and *AT&T Wireless Services, Inc.*, 17 FCC Rcd 7891 (2002), *forfeiture ordered*, 17 FCC Rcd 21866, 21875-76 ¶¶ 26-28 (2002).

¹⁰ 47 U.S.C. § 503(b).

¹¹ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹² 47 U.S.C. § 504(a).

¹³ See 47 C.F.R. § 1.1914.